

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No.
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GANPATSINGH VAKHATSINGH

Versus

DIST. SUPERINTENDENT OF POLICE

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[ Appearance:

MR IS SUPEHIA for Petitioner

MR PB BHATT, AGP, assisted by MR SP HASURKAR for  
Respondent.

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 31/08/98

ORAL JUDGEMENT

Rule. Mr. P.B.Bhatt, learned Assistant Government Pleader waives service of the Rule on behalf of the respondent. At the request of the learned Advocates, this petition is taken up for final hearing to-day.

The petitioner, who is serving as Armed Head Constable, was all allotted rent free accommodation. The petitioner was transferred from Patan to Sami and was

relieved on 6-3-96 and joined at Sami. Since the petitioner did not vacate the quarters allotted to him at Patan, an order dated 15-7-96 was passed by DSP, Patan asking him to vacate the premises at Patan and to pay Rs.800/- per month as market rent. The petitioner, however, on 20th July, 1996 made a request to the authority to allow him to continue to occupy the quarters at Patan till Diwali. However, the DSP, Patan on 19-8-96 turned down the said request of the petitioner to allow him to continue the quarters upto Diwali and the petitioner was asked to pay rent at the market rate of Rs.1920/- per month. The petitioner has challenged both these orders dated 15-7-96 and 19-8-96 by way of this petition.

There is no dispute to the fact that Rs.800/- has not been recovered from the petitioner by way of market rent with effect from 6-5-96 as stated in the order at Annexure "A" dated 15-7-96. As per the Resolution of the Roads and Building Department of the State of Gujarat, bearing No.ACD/1089/80/No.1 dated 20th April, 1992, it is decided to deduct the amount of rent at the market rate for different classes of quarters. As the quarters of the petitioner belongs to "C" category and as per the said resolution Rs.480/- are required to be deducted by the Government at economic rate and Rs.920/- per month at the market rate. There is no dispute to the fact that the petitioner, who was transferred from Patan to Sami was entitled to retain the quarters for a period of two months and, therefore, no rent was recovered from 6-3-96 to 6-5-96. Since the request of the petitioner was rejected to allow him to continue to occupy the quarters upto Diwali by an order dated 19-8-96, there was no question of charging rent at the economic rate and, therefore, the authorities were justified in recovering the amount at the market rate after June, 1996.

In the mean time a further development has taken place that the petitioner has again been transferred from Sami to Patan on 4-12-1997 and since the petitioner did not vacate the quarters in question he has started to occupy the same. It is the grievance of the petitioner that since he is again transferred to Patan, the respondents cannot charge the rent at the market rate. Secondly Mr.Suphia, learned counsel for the petitioner has submitted that since the authorities are deducting the amount at the rate of Rs.1920/-, the petitioner is entitled to get HRA. In the submission of Mr. Suphia, if the petitioner had occupied some other premises, he would have been entitled to receive the amount of HRA and therefore by applying the same logic, the petitioner

should be reimbursed the amount of Rs.1920/- by way of HRA. This argument of Mr. Suphia is required to be rejected for the simple reason that there is no order of allotment of quarters for the period when the petitioner was at Sami and when he occupied the quarters at Patan till the time when he was again transferred to Patan, meaning thereby the petitioner is using the quarters unauthorisedly and for such unauthorisation, the respondents are justified in deducting the rent at the market rate. If the petitioner had occupied some other house, instead of retaining the unauthorised occupation, his claim for HRA would have been justified. However, since this is not the case, the argument of Mr. Suphia which is unreasonable cannot be sustained. However, considering the peculiar facts and circumstances of this case and particularly when the petitioner is transferred back to Patan, the concerned authority may consider the question of regularising the possession of the quarters of the petitioner atleast from 4-12-97 till the day on which the petitioner was transferred back to Patan. With this observation, this petition is rejected. Rule is discharged with no order as to costs.

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